United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 19-0233**
	)	**Issued: July 16, 2019**
U.S. POSTAL SERVICE, LAKE HIAWATHA MAIN POST OFFICE, Lake Hiawatha, NJ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 12, 2018 appellant, through counsel, filed a timely appeal from a September 17, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the September 17, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant met his burden of proof to establish back and hand conditions causally related to factors of his federal employment.

FACTUAL HISTORY

On December 18, 2017 appellant, then a 58-year-old temporary sales and services clerk, filed an occupational disease claim (Form CA-2), alleging that he developed sciatica and carpal tunnel syndrome due to factors of his federal employment, including "continuous hours of unloading trucks, moving, scanning, and tossing heavy boxes and banded bundles." He indicated that he first became aware of his conditions and first realized that they were caused or aggravated by his federal employment on December 7, 2017. Appellant stopped work on December 12, 2017.

In an undated narrative statement, appellant indicated that he had reported for full-time eight-hour work on December 6, 2017 and upon arrival he was told that the majority of his work would be unloading trucks, breaking down and unloading packages from carts and bins, scanning all packages and tossing/walking them to the assigned route bin, unloading pallets of banded magazines, and distributing the banded packets to each route station. He stated that, for virtually all but 45 minutes of his work shift, the above was his routine for the day. Appellant completed the eight-hour work shift. He indicated that he was totally unaware that his new position consisted of substantial dock and warehouse work. Appellant returned to work on December 7, 2017 and was given the same routine, excluding the magazines. He was told that during Christmas the volume of inbound was the highest of the year and that his job would pretty much be the above and after the Christmas rush he would be able to spend more time on window duties, and other peripheral duties and training at the facility. On December 7, 2017 appellant reported that he was in a lot of back and hand pain and that his fingers and hands were cramping so badly that he could hardly use the scanner. He was told that after a few week he would acclimate. Appellant asked if he could work a reduced shift for the first 10 days or so, but he was told that it was the busiest time and that they needed him there. He mentioned that coming from 19 years of office management and being immediately placed into dock/warehouseman work did not allow the time for any physical acclimation. Appellant returned to work on December 8, 2017 and was in worse pain, with swollen hands and limping due to a strained back. With the concern of not wanting to lose his job, he continued to work, but finally reported that he needed to cut his shift short due to his pain. Appellant was allowed to leave after a six-hour shift with the hope that two days off that weekend would help rejuvenate his body. When he returned to work on Monday, December 11, 2017, he worked an eight-hour shift. During that shift, appellant asked that some envelopes be picked up for him because the pain was severe and he could not bend to the ground. That night he experienced back spasms and was unable to sleep. Appellant's hands were both swollen, with cramping fingers, and painful hands going through his wrists. He reportedly called into the office on December 9, 2017 and advised that he was going to the physician due to his back and hand injuries that he had sustained at work. Appellant noted that he had never experienced or suffered these types of injuries in his life.

In a December 13, 2017 report, Dr. Andrew Gilmartin, a Board-certified internist, diagnosed carpal tunnel syndrome and sciatica and he opined that these conditions were directly related to the recent work appellant had been doing. He provided work restrictions of no bending, no repetitive activities, and no lifting of any kind for approximately two weeks, or until further evaluation.

In an undated statement, the employing establishment controverted appellant's claim. It indicated that he had attended new employee training from November 27 to 28, 2017, sedentary classroom clerk training from November 29 to December 5, 2017, and then reported to his duty station of Lake Hiawatha on December 6, 2017. The employing establishment asserted that appellant's federal duties included sorting small parcels, performing window duties which included serving customers by selling stamps, and at the end of the night, he helped prepare mail for dispatch. It stated that at no time did he ever unload or load trucks with mail including parcels. The employing establishment argued that appellant's carpal tunnel and sciatica conditions could not have been caused by factors of his federal employment because he only worked for three days. It strongly believed that his diagnosed conditions existed prior to his federal employment.

By development letter dated January 12, 2018, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a February 8, 2018 narrative statement indicating that he utilized his thumb, index finger, and wrist thousands of times through the day while scanning items at work.

In reports dated December 13 and 27, 2017, and January 5, 2018, Dr. Gilmartin noted that appellant presented with hand pain localized to the left hand and right hand with some radiation to the wrists. He stated that the pain began six days prior and the onset of pain was work related. Dr. Gilmartin diagnosed carpal tunnel syndrome and sciatica and indicated that appellant's work required significant lifting, bending, and twisting in a repetitive manner for eight hours per day. He noted that appellant had been in a "very deconditioned state" prior to starting work approximately one week before.

On February 5, 2018 Dr. Gilmartin indicated that appellant's symptoms of hand pain with swelling had worsened since his last visit. He related that appellant's federal duties included significant activity with bending and twisting of the right wrist and hand while scanning and sorting packages and opined that appellant's conditions began while working over the holidays. Dr. Gilmartin noted that appellant had no prior history of osteoporosis or carpal tunnel syndrome.

In reports dated December 27, 2017 and January 11, 2018, Dr. Gilmartin continued to diagnose carpal tunnel syndrome and sciatica and opine that these conditions were directly related to the recent work appellant had been doing.

By decision dated March 19, 2018, OWCP denied appellant's claim because the medical evidence of record failed to establish causal relationship between his diagnosed conditions and factors of his federal employment.

On March 27, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted an April 19, 2018 report from Dr. Gilmartin, who advised that appellant had been his patient for several years, most recently in December 2017, after he was evaluated for a work-related injury to his right hand. He opined that the injury seemed to be related to appellant's carpal tunnel syndrome, which was exasperated by the use of a scanning device associated with packing, tracking, handling, and distribution, and was utilized throughout the workday and required the constant repetitive movements of the thumb, index finger, and wrist.

Dr. Gilmartin further indicated that appellant was also suffering from gouty arthritis of the hands, for which he had referred him to a rheumatologist.

A telephonic hearing was held before an OWCP hearing representative on July 23, 2018. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

In response, appellant submitted an August 3, 2018 report from Dr. Gilmartin who specified that appellant had been his patient for over six years and asserted that appellant had no medical history of having inflammation or gout of either hand prior to his work-related injury. He related that on December 13, 2017 appellant was evaluated for a work-related injury to his right hand and was diagnosed with carpal tunnel syndrome, inflammation of the left hand, and sciatica. Dr. Gilmartin reiterated his opinion that appellant's federal duties from December 6 to 11, 2017 were a direct cause of his injury, which was caused by repetitive micro traumas and exacerbated by the repetitive motions of the strap-on scanner he was required to use at work. He reported that his initial evaluation showed that both hands were swollen, right more inflamed than left, obvious discoloration on both hands, with protruding veins through the wrists and lower arms, resulting in about 10 percent mobility of the right hand. Dr. Gilmartin explained that after a full evaluation he had determined that appellant had a carpal tunnel syndrome type of injury caused by repetitive micro traumas. Appellant's left hand was also swollen, but to a much lesser degree than the right, displaying only slight vein inflammation with approximately 60 percent mobility of his fingers. Dr. Gilmartin also examined appellant's back and performed a variety of physical tests and determined that he was also suffering from sciatica. He mentioned to appellant that having him start a new job that involved the work type as described above would be the equivalent of him participating in a marathon without any training or preparation, without any chance of completing the race.

By decision dated September 17, 2018, OWCP's hearing representative affirmed the March 19, 2018 decision. It determined that Dr. Gilmartin's reports did not differentiate between appellant's preexisting conditions and any effects of work factors nor explain how appellant's brief period of work contributed to his diagnosed medical conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

[4] *Supra* note 2.

[5] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[6] *K.V. and M.E., id.; Elaine Pendleton*, 40 ECAB 1143 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[10]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed back and hand conditions are causally related to the accepted factors of his federal employment.

Dr. Gilmartin's reports provided diagnoses and statements of reasonable medical certainty, but failed to provide a detailed explanation on causal relationship. While he identified the specific employment factors alleged by appellant, he did not provide a pathophysiological explanation as to how those activities either caused or contributed to appellant's diagnosed conditions.[12] Additionally, in his April 19, 2018 report, Dr. Gilmartin noted that appellant's work-related injury seemed to be related to his carpal tunnel syndrome, and it was his opinion that appellant was suffering from both carpal tunnel syndrome and gouty arthritis of the hands. He also described appellant as having been in a deconditioned state prior to the work-related injury, but did not provide any further explanation or details. The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same

[7] *D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[10] *Id.*; *Victor J. Woodhams, supra* note 7.

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[12] *Id*.

body part,[13] and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[14] Thus, the Board finds that the reports from Dr. Gilmartin are insufficient to meet appellant's burden of proof, as they do not provide adequate physiological explanation regarding the cause of appellant's diagnosed conditions.

Moreover, while Dr. Gilmartin opined that appellant's medical conditions were a direct result of the factors of his federal employment, noting that he had no medical history of having inflammation or gout of either hand prior to his work-related injury, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[15]

As appellant has not submitted any rationalized medical evidence to support his claim that he sustained back and hand conditions causally related to the accepted employment factors, he has failed to meet his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish back and hand conditions causally related to the accepted factors of his federal employment.

[13] *E.g., K.R.*, Docket No. 18-1388 (issued January 9, 2019).

[14] *See, e.g., A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

[15] *See J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board